

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,315

643

ROLAND E. MATTHEWS, JR.,

Appellant,

v.

KENNETH L. HARDY, ET AL.,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

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QUESTIONS PRESENTED *

I. Whether the District Court erred in granting Appellee's motion for summary judgment when the pleadings on file, together with the affidavits, presented genuine issues of fact as to the extent and nature of disciplinary action and harassment directed against Appellant as a result of his efforts to seek legal redress of grievances?

II. Whether the District Court erred in denying Appellant's counter motion for partial summary judgment when Appellant was transferred against his will from Lorton Reformatory to Saint Elizabeths without a judicial hearing on the issue of mental health and without application of the procedural safeguards required in civil commitment proceedings?

*This case was before the Court on a prior occasion for consideration of Appellant's pro se motion for appointment of counsel. Pursuant to this Court's order of February 14, 1968, in Appeal No. 21,315, this case was remanded to the District Court.

STATUTES, CONSTITUTIONAL PROVISIONS, AND RULES INVOLVED

District of Columbia Code

24 D.C. Code, Section 302 (1967 ed.)

Any person while serving sentence of any court of the District of Columbia for crime, in a District of Columbia penal institution, and who in the opinion of the Director of the Department of Corrections, is mentally ill, shall be referred by such Director to the psychiatrist functioning under Section 24-106, and if such psychiatrist certifies that the person is mentally ill this shall be sufficient to authorize the Director to transfer such person to a hospital for the mentally ill to receive care and treatment during the continuance of his mental illness.

United States Constitution

Amendment V

No person shall be ... deprived of life, liberty, or property, without due process of law...

Amendment XIV

... nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Rules of Civil Procedure

Rule 56(c)

... The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law....

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,315

ROLAND E. MATTHEWS, JR., Appellant

v.

KENNETH L. HARDY, ET AL., Appellee

Appeal From The United States District Court
For The District of Columbia

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

Appellant, Roland E. Matthews, Jr., filed a civil suit against Kenneth L. Hardy, Director of the Department of Corrections of the District of Columbia, the Board of Commissioners of the District of Columbia and the District of Columbia itself. Appellant sought money damages as compensation for an alleged illegal transfer from Lorton Reformatory to Saint Elizabeths Hospital and alleged cruel and unusual punishment while confined as an inmate at Lorton. On August 15, 1968, the case was argued before the

Honorable George L. Hart on Appellee's Motion For Summary Judgment and Appellant's Counter Motion for Partial Summary Judgment. After a hearing, the District Court granted Appellee's motion. Appellant filed a timely Notice of Appeal. Jurisdiction of this Court on appeal is proper under 28 U.S. Code, Section 1291, and the order of the District Court, dated August 21, 1968, granting appellant's petition for leave to prosecute his appeal without prepayment of costs.

STATEMENT OF THE CASE

Procedural Background

This case began on or about June 19, 1967, when Appellant was confined as a patient in the John Howard Pavilion at Saint Elizabeths Hospital. Appellant filed a pro se civil complaint against Appellees herein, alleging that certain personal property was being wrongfully withheld from him, and that his transfer to Saint Elizabeths from the Lorton Reformatory, where he was serving a sentence as a result of a criminal conviction in 1965, was illegal.

Appellee's motion for summary judgment was granted by the District Court on August 3, 1967. On appeal, this Court reversed the judgment and remanded the case for appointment of counsel pursuant to its opinion in Hudson v. Hardy, ____ U.S. App. D.C. ____ (#20,908, dec. Feb. 14, 1968). Thereafter, Appellant filed through counsel an amended complaint, incorporating the grievances set forth in Appellant's pro se complaint and further alleging cruel and unusual punishment under the Eighth Amendment. Appellees again moved to dismiss the amended complaint, or, in the alternative, for summary judgment. After submission of pleadings, including, *inter alia*, Appellant's counter motion for partial summary judgment on the issue of the constitutionality of his transfer to

Saint Elizabeths, the case was heard by the Honorable George L. Hart on August 15, 1968. After a hearing, Appellee's motion for summary judgment was granted, and Appellant's counter motion for summary judgment was of course denied. These judgments are the subject of this appeal. The transcript of the hearing on these motions shall hereinafter be referred to as "Tr."

Factual Background

Appellant alleged that he was subjected without cause to a course of conduct which included, inter alia, confinement in a control cell which failed to meet even threshold standards of decency, withholding of his personal property, continuous and unjustifiable harassment by certain members of the Lorton staff, and ultimately transfer against his will to Saint Elizabeths Hospital. Appellant particularly attacked the constitutionality of his transfer to Saint Elizabeths on the grounds that it violated both the equal protection and due process clauses of the Constitution and was designed to hinder his attempt to seek legal redress of grievances through court action. Appellant contended that the treatment described above amounted to cruel and unusual punishment.

At the hearing on Appellee's Motion to Dismiss, or, in the alternative, for Summary Judgment, none of the factual issues were resolved. The pleadings and affidavits

submitted by both parties differed materially as to the nature, extent, and reasons for Appellant's behavior at Lorton, and disciplinary action taken as a result thereof. These questions of fact existed as strongly prior to the hearing as they did thereafter. The Court nonetheless granted Appellee's Motion for Summary Judgment.

The constitutionality of Appellant's transfer to Saint Elizabeths, raised by Appellant's counter motion for partial summary judgment, is a question of law. The Court denied Appellant's motion.

SUMMARY OF ARGUMENT

I. Appellant, an inmate at Lorton Reformatory, filed a civil suit for money damages alleging that Appellees had without good cause placed him in a control cell which effectively segregated him from the general prison population, withheld his personal property, and singled him out for constant harassment and intimidation. This course of conduct, taken as a whole, amounted to cruel and unusual punishment under the Eighth Amendment. Appellees moved to dismiss, or, in the alternative, for summary judgment, and filed in support of their motion both exhibits and an affidavit of the Superintendent at Lorton. Appellant responded in opposition with his own affidavit, which contradicted in every material sense Appellees' representation of the true facts. Despite the existence of genuine issues of material fact, the trial court granted Appellees' motion for summary judgment. Appellant contends that this judgment was error under Federal Rules of Civil Procedure 56(c), particularly in view of his status as a prisoner and the handicaps which necessarily attach thereto.

II. Appellant was transferred against his will from Lorton to Saint Elizabeths Hospital pursuant to D.C. Code 302 (1967 ed.). This transfer was ordered with-

out a judicial hearing on the issue of Appellant's sanity, thereby ignoring the procedural safeguards provided in the 1964 Hospitalization of the Mentally Ill Act. Appellant objected to his transfer on the grounds that it deprived him of equal protection of the law under Baxstrom v. Herald, 383 U.S. 107 (1967). Appellant's prior criminal conduct was used as a basis for distinguishing his commitment from all other civil commitments. Appellant further alleged that his commitment violated due process, since it was imposed upon him without the opportunity to be heard, cross-examine, and offer evidence in his own behalf. Specht v. Patterson, 386 U.S. 605 (1967). A person sought to be committed to a mental institution, even if he is an inmate serving a sentence, is entitled to the same treatment as any other person being subjected to a civil commitment. For these reasons, Appellant attacked the constitutionality of his commitment to Saint Elizabeths by moving for summary judgment. Considering the constitutional violations, that motion was improperly denied.

ARGUMENT I.

THE TRIAL COURT ERRED BY GRANTING APPELLEES' MOTION FOR SUMMARY JUDGMENT WHEN THE PLEADINGS AND AFFIDAVITS SHOWED GENUINE ISSUES OF MATERIAL FACTS AS TO THE REASONS FOR SEGREGATING APPELLANT FROM THE GENERAL PRISON POPULATION, WITHHOLDING HIS PERSONAL PROPERTY, AND TREATING HIM DIFFERENTLY FROM OTHER INMATES.

A. The Test For Summary Judgment Must Be Liberally Applied When One of The Litigants Is A Prisoner.

Summary Judgment may be entered only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). Application of the summary judgment rule, however, is tempered where one of the parties is a prisoner and subject to the "handicaps... detention necessarily imposes upon a litigant." Phillips v. United States Board of Parole, 122 U.S. App. D.C. 235, 353 F.2d 711 (1965); Hudson v. Hardy, ___ U.S. App. D.C. ___ (#20,908, dec. Feb. 14, 1968). In the instant case, Appellant was represented by counsel at the time he filed his amended complaint, but by virtue of his confinement was nevertheless unable to produce the kind of documentary evidence necessary to defeat Appellees' motion.

B. Where Supporting Affidavits Showed Two Materially Different Sets of Facts, Summary Judgment Was Improperly Granted.

It is clear that a party moving for summary judgment has the burden of demonstrating that no genuine issues of material fact existed. 6 MOORE, FEDERAL PRACTICE, Section 56.15(3) (2d ed 1966); Hudson v. Hardy, supra. Here, Appellee did not rest entirely upon his pleadings, but submitted in support thereof an affidavit of the Superintendent of the Lorton Reformatory and 8 exhibits including disciplinary reports filed against Appellant. Under these circumstances, Appellant responded in the only way available to him, i.e., by filing his own affidavit containing his version of the facts leading to his confinement in a control cell, and the treatment accorded him by prison officials and guards.

Even a cursory reading of the pleadings and affidavits reveals several unresolved factual issues (Tr. 16,17):

1. The reasons, if any, for isolating Appellant from the general prison population.
2. The justification, if any, for withholding Appellant's personal property.
3. The explanation, if any, for subjecting Appellant to harassment, and arbitrary and vindictive treatment at the hands of prison officials and guards.

It is submitted that these issues can only be fairly resolved at trial, where Appellant, with the aid of

counsel, could confront, cross examine, and produce witnesses in his own behalf. The mere fact that Appellant has been convicted of a crime should not compromise his right to his day in court, or diminish in any way the credibility to be attached to his sworn statement. Appellant seeks only his day in court, and not to have his complaint terminated in its embryonic stages because, as a prisoner, he is unable to substantiate his allegations in a manner which may be required in the ordinary course. In view of Appellant's status and the disadvantages which attach thereto, Appellees were not entitled to judgment as a matter of law.

ARGUMENT II.

APPELLANT'S INVOLUNTARY TRANSFER FROM LORTON TO SAINT ELIZABETHS DENIED HIM EQUAL PROTECTION OF LAW, VIOLATED DUE PROCESS, AND FAILED TO CONFORM TO STATUTORY REQUIREMENTS.

D.C. Code, Section 302 provides for the transfer of prisoners from penal institutions to mental institutions under specified circumstances:

Any person while serving sentence of any court of the District of Columbia for crime in a District of Columbia penal institution, and who in the opinion of the Director of the Department of Corrections, is mentally ill, shall be referred by such Director to the psychiatrist functioning under Section 24-106, and if such psychiatrist certifies that the person is mentally ill this shall be sufficient to authorize the Director to transfer such person to a hospital for the mentally ill to receive care and treatment during the continuance of his mental illness.

A literal reading of the statute permits inmates to be transferred to mental institutions in the absence of a judicial hearing on the state of their mental health. Such a narrow reading raises serious constitutional questions of equal protection and due process of law, unless the statute is read consistent with the constitutional safeguards provided in the 1964 Hospitalization of the Mentally Ill Act, D.C. Code, Sections 21-541 to 21-545 (1967). Cf., Bolton v. Harris, ___ U.S. App. D.C. ___, 395 F.2d 642 (1968). Appellant urges that a judicial inquiry into the sanity of prisoners prior to transfer to

an insane asylum is necessary to save an otherwise constitutionally defective statute. Appellee's failure to pursue this course in the instant case renders their act unconstitutional.

A. The Transfer Of Appellant To Saint Elizabeths Hospital Was In Denial Of His Right To Equal Protection Of Law.

The commitment of Appellant to a hospital for mental treatment, on the certification of a single psychiatrist, by the prison authorities, in exercise of their discretion, without a judicial hearing on the issue, was done under Section 24-302 only because Appellees took an unconstitutionally narrow reading of the statute. This was denial of equal protection, as the law of the District of Columbia requires that any one else who is to be committed against his will be accorded a judicial hearing. Hospitalization of the Mentally Ill Act, D.C. Code, Section 21-542 - 21-545 (1967 ed.); Bolton v. Harris, ___ U.S. App. D.C. ___ (1968).*

A distinction which separates prisoners from any other citizen suspected of mental illness is improper, as it bears no rational relation to the issue of insanity. Nothing in the fact of incarceration suggests insanity or

*That the equal protection guarantee applies to the federal government through the fifth amendment cannot be disputed. Bolling v. Sharpe, 347 U.S. 497 (1958).

bears indirectly on mental health. Prison custody cannot, therefore, stand as the basis for denying appellant equal protection of law.

Classification of mentally ill persons as either insane or dangerously insane of course may be a reasonable distinction for the purposes of determining the type of custodial or medical care to be given, but it has no relevance whatever in the context of the opportunity to show whether a person is mentally ill at all. For the purposes of granting judicial review before a jury of the question whether a person is mentally ill and in need of institutionalization, there is no conceivable basis for distinguishing the commitment of a person who is [serving sentence] from all other civil commitments.

Baxstrom v. Herald, 383 U.S. 107, 111 (1967).

It is clear, in light of Baxstrom, that the commitment of plaintiff on the mere certification of a psychiatrist, where other citizens are accorded a judicial hearing, is in violation of his right to equal protection of law. Bolton leaves no doubt that the course that should have been followed was that prescribed in the Hospitalization of the Mentally Ill Act. The failure to grant plaintiff a judicial hearing, resting as it did on the distinction apparent in a literal reading of the statute, D.C. Code, Section 24-302, renders the commitment of the plaintiff defective as a matter of law, and provided the trial court with ample grounds to grant Appellant's counter motion for partial summary on the legality of his transfer.

B. The Transfer Was In Denial Of Appellant's Right To Due Process Of Law.

The transfer of plaintiff from the prison to the hospital brought with it a change in his status from an inmate in a penal institution to an inmate in an insane asylum (Tr. 7). This severe alteration in his status brought intrusions into his privacy, and further loss of privileges and freedom. When an individual is subjected by the government to substantial change in status with its related infringement of basic rights, there must be judicial intervention in the process. The draftsmen of the civil commitment statute recognized this and created a procedure whereby a judicial hearing on sanity was accorded an individual who the government seeks to place in an asylum against his will. D.C. Code, Section 21-542 - 21-545. Bolton v. Harris, supra, takes the same approach toward those found not guilty of crimes by reason of insanity. It is also imposed in the analogous situation of the transfer of youths sentenced as juveniles to adult institutions. In Re 11 D.C. Youths, 91 Washington Law Reporter 3009 (Juv. Ct., 12/13/63).

The requirement of due process in the commitment of convicts to mental hospitals is most clearly imposed by Specht v. Patterson, 386 U.S. 605 (1967).

The petitioner in Specnt challenged his commitment to a hospital under the Colorado Sex Offender Act, which permitted the judge to raise the issue of the convicted offender's mental health before sentencing, and then to order an indeterminate commitment based on secret pre-sentence psychiatric reports. The Supreme Court found this defective as it made the "conviction the basis for commencing another proceeding under another act to determine whether a person ... [is] mentally ill." Specht v. Patterson, supra, at 610. The distinct issue of mental illness required a separate judicial inquiry replete with all constitutional safeguards.

Due process ... requires that he be present with counsel, have an opportunity to be heard, to be confronted with witnesses against him, have the right to cross-examine, and to offer evidence of his own.

Id., at 610.

The overwhelming similarities between Specht and Appellant's dilemma make it persuasive authority. In both cases the individual had been found guilty of a crime; the issue of his mental health was raised post trial; the commitment was ordered without a hearing on the issue; the commitment was possible only because of the prior conviction; the conviction was unrelated to his mental health. Under the Appellees' reading of Section 24-302, Appellant was as effectively denied due process of law as the petitioner in Specht, and the commitment, without a judicial

hearing, was invalid. This infringement of Appellant's constitutional right to due process of law was further reason to grant Appellant's motion.

C. Appellant's Commitment To Saint Elizabeths Was Not In Compliance With The Statute.

Assuming, arguendo, that Appellees' reading of Section 24-302 permits the Director of the Department of Corrections to commit an inmate if a psychiatrist certifies him as mentally ill, the commitment was still defective. The psychiatrist plays a central role because his certification of opinion is the sole basis for the commitment. With such power comes an equally great responsibility that the examination of the psychiatrist is comprehensive, and commensurate with professional standards. The examination given the Appellant fell far below any standards of reasonable completeness, and therefore rendered the commitment procedure defective.

This Court has noted that "more than three or four hours are necessary to assemble a picture of a man". Rollerson v. United States, 119 U.S. App. D.C. 400, 405, 343 F.2d 269, 274 (1964). Plaintiff was examined five (5) to ten (10) minutes (Tr. 9). The obvious time difference raises doubts as to the completeness of the examination. Since the opinion of the psychiatrist determines whether the prisoner is to be committed, it would seem that this

short examination is wholly inadequate to support a diagnosis of mental illness in all but the most deteriorated case. Appellant's examination must as a matter of law be held insufficient. This failure to examine may not be remedied by mere reliance on the reports of the prison officials. There must be an independent, adequate psychiatric examination conducted by the doctor. This was not done here.

The psychiatrist's duty to conduct a full examination is not only imposed by virtue of his central role in the commitment process adopted under Section 24-302, but by his responsibility as a doctor. He cannot short-cut the examination of a prisoner merely because there are prison records, and the inmate is subject to the power of the state. He can do no less for the prisoner than he would for a private patient.

Prison physicians owe no less duty to the prisoner who must accept their care, than to private patients who are free to choose.

Pisacano v. New York, 8 A.D.2d 335, ___, 188 N.Y.S.2d 35, 40 (1959). The blatant failure of Appellees to adequately examine Appellant renders the certification of mental illness a nullity. Appellees therefore did not comply with the statute, providing yet another ground for granting Appellant's motion.

D. A Commitment Procedure Which Violated Fundamental Constitutional Rights Entitled Appellant To Judgment As A Matter of Law.

The logic of Specht and Baxstrom, supra, renders the commitment of Appellant to Saint Elizabeths Hospital without a judicial hearing on the issue of mental illness defective as a matter of law. Appellees adopted an uncommonly narrow view of the statute, thereby denying Appellant the safeguards provided for all civil commitments under the Hospitalization of the Mentally Ill Act. In Cameron v. Mullen, 128 U.S. App. D.C. 235, 387 F.2d 193 (1967), this Court interpreted the meaning of Baxstrom at 243:

Baxstrom thus might be said to require the conclusion that ... criminal conduct ... cannot justify denial of procedural safeguards...

24 D.C. Code, Section 302 embodies this same infirmity. A finding of mental illness is imposed upon the inmate, and he is arbitrarily ordered to a mental institution without an opportunity to be heard. The absence of due process criticized in Baxstrom and Cameron, supra, is similarly absent under Section 302.

Even if Appellant's commitment is deemed constitutionally valid, a cursory ten minute interview cannot be substituted for the required psychiatric examination. Failure to adequately assess Appellant's mental health

made the commitment defective as a matter of law. For these reasons, Appellant was entitled to judgment on his motion attacking the constitutionality of his transfer to St. Elizabeths Hospital.

CONCLUSION

Appellant prays that this Court remand his case to the District Court with instructions to vacate its order granting summary judgment for Appellee, and enter an order granting judgment for Appellant on the legality of his transfer to Saint Elizabeths.

Respectfully submitted,

Peter L. Truebner
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief was mailed, postage prepaid, to Charles T. Duncan, Corporation Counsel, District Building, Washington, D.C. 20004, this 23rd day of December, 1968.

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BRIEF FOR APPELLEES

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 22,315

ROLAND E. MATTHEWS, JR.,

Appellant,

v.

KENNETH L. HARDY, et al.,

Appellees.

Appeal From The United States District Court
For The District Of Columbia

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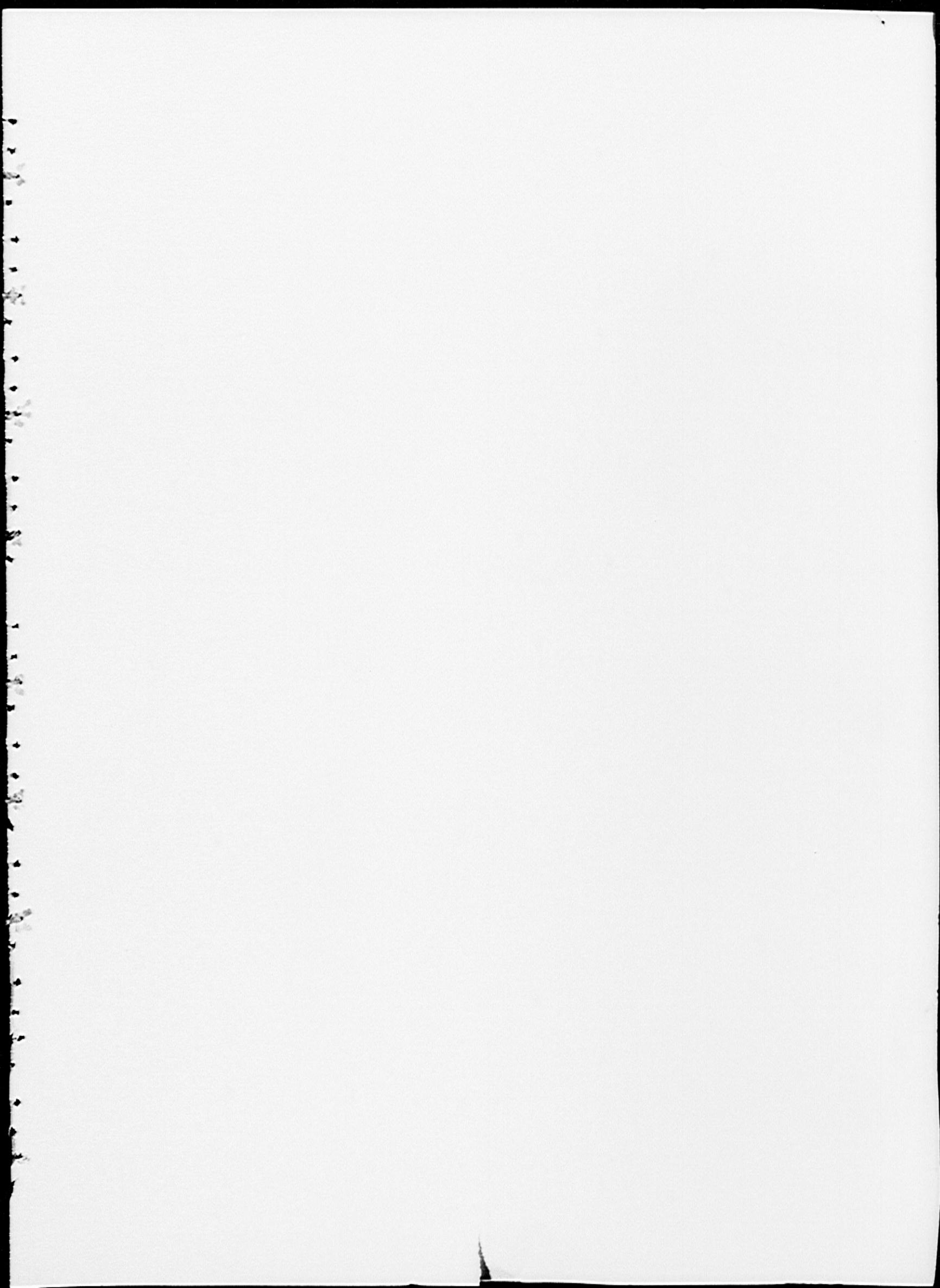
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United States Court of Appeals
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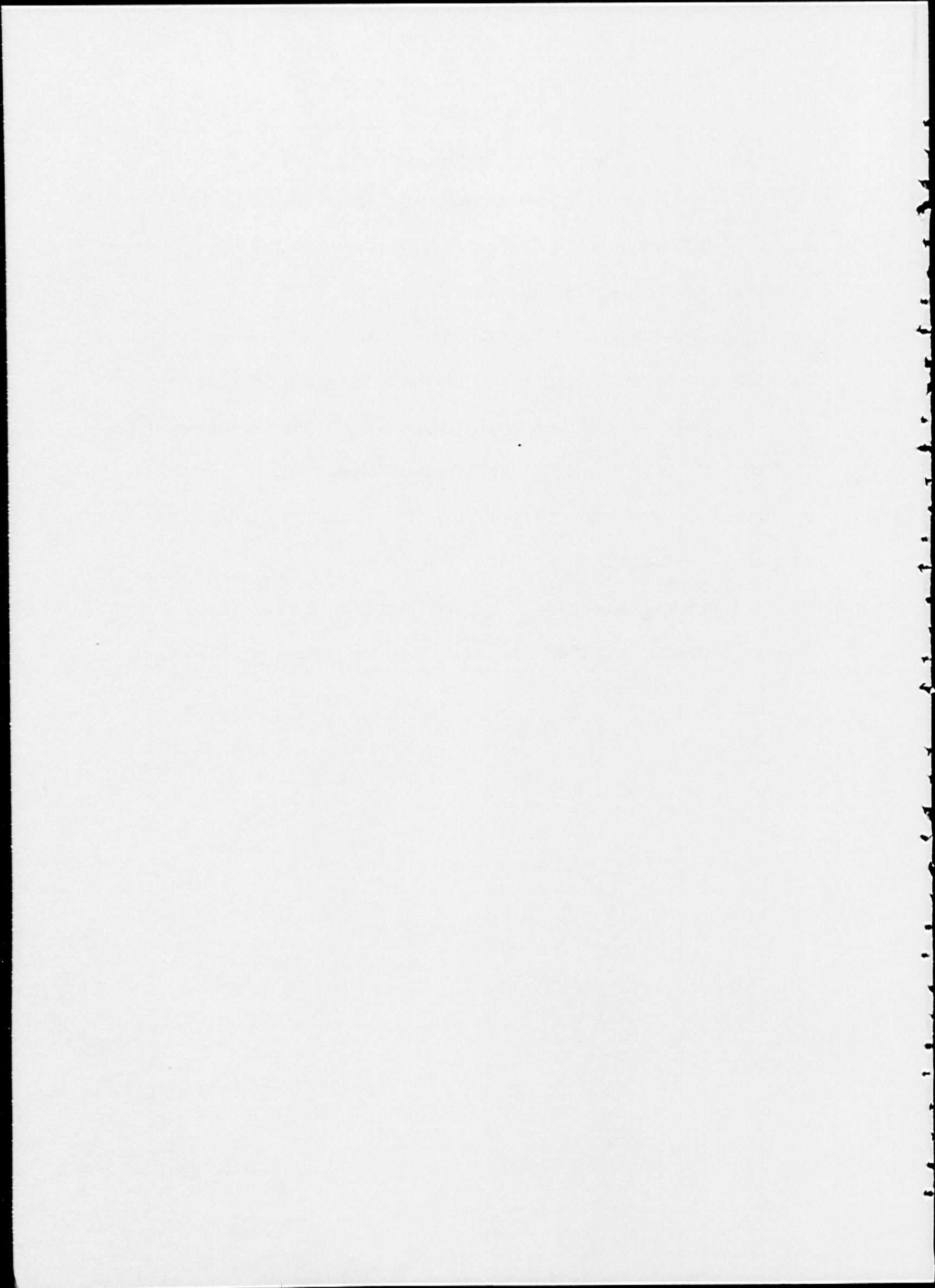
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ISSUES PRESENTED FOR REVIEW

1. Whether an inmate serving a prison sentence is entitled to a judicial hearing as a constitutional prerequisite to his hospitalization and treatment for a mental disorder.
2. Whether prison officials violate an inmate's constitutional rights by taking and holding for safekeeping his personal property.
3. Whether conclusory allegations of "cruel and unreasonable punishment" in an inmate's complaint, countered by the affidavit of the prison superintendent, are sufficient to withstand a motion for summary judgment.

This case, under No. 21,315 was previously before the Court and, on February 14, 1968, was remanded for further proceedings.



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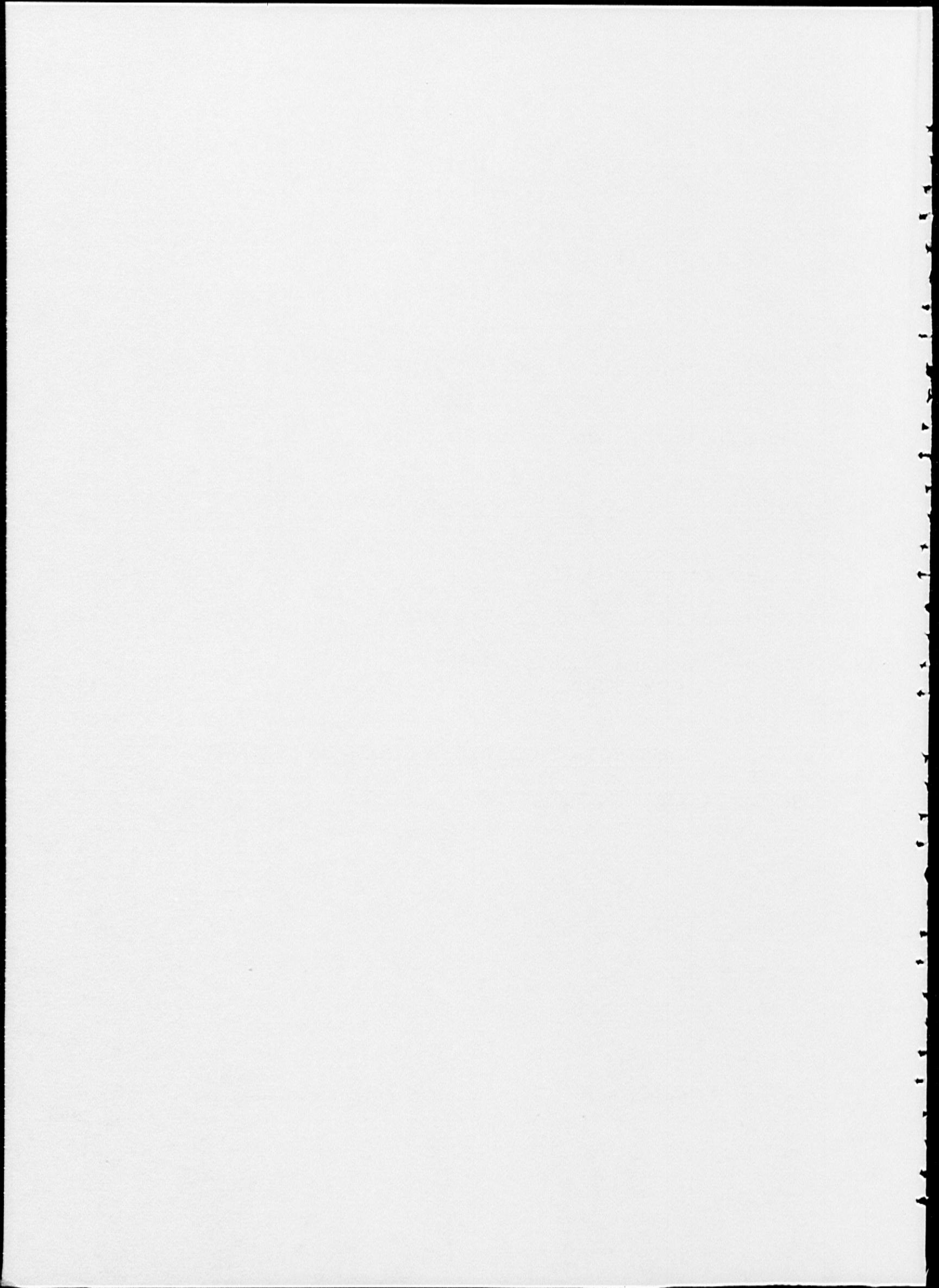
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* Cases chiefly relied upon are marked with asterisks.



UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 22, 315

ROLAND E. MATTHEWS, JR.,

Appellant,

v.

KENNETH L. HARDY, et al.,

Appellees.

Appeal From The United States District Court
For The District Of Columbia

BRIEF FOR APPELLEES

COUNTER-STATEMENT OF THE CASE

On June 16, 1967, Roland E. Matthews, Jr., an inmate of the District of Columbia Jail (hereinafter "the inmate"), filed in the court below a pro se complaint for declaratory judgment. Named as defendants were the Director of the District of Columbia Department of Corrections (hereinafter "the Director") and the District of Columbia Board of Commissioners (hereinafter "the Commissioners"). Essentially the complaint alleged that the Director and the Commissioners had refused to restore to the inmate certain personal property taken

from him, and that the Director had illegally caused him to be committed to a mental hospital. Upon motion of the Director and the Commissioners, summary judgment was entered in their favor on August 11, 1967. The court thereafter granted the inmate's application for leave to appeal without prepayment of costs.

By order of this Court entered February 14, 1968, the case was remanded to the court below for compliance with the procedural requirements articulated by this Court in Hudson v. Hardy (No. 20,908, decided that same date, petition for rehearing en banc pending). On April 8, 1968, the court below vacated its order of August 8, 1967, and appointed counsel to represent the inmate, and on May 2, 1968, granted the motion of appointed counsel for leave to file an amended complaint.

In the amended complaint filed on May 6, 1968, it was alleged (1) that during the months of February and March, 1967, the inmate was isolated from the general prison population without cause; (2) that on March 16, 1967, the inmate was transferred to Saint Elizabeths Hospital in violation of his constitutional rights, because he was not first afforded a judicial hearing on the issue of his sanity and was not, in fact, mentally ill; (3) that certain specified items of personal property were unconstitutionally taken from him; and (4) that, after his return to the Lorton

Reformatory, he was placed in solitary confinement without justification, where he was "subjected to cruel and unreasonable punishment in violation of his constitutional rights." On the basis of these allegations, the inmate requested the court to enjoin the Director and the Commissioners from again transferring him to Saint Elizabeths Hospital, to direct his release into the general prison population of the Lorton Reformatory, and to enter judgment in his favor for damages of \$55, 000.

The Director and the Commissioners moved to dismiss the amended complaint or, in the alternative, for summary judgment. Attached to their motion was an affidavit of the Superintendent of the Lorton Reformatory, together with supporting exhibits A through H. The affidavit and supporting exhibits disclose that, following his conviction of manslaughter, the inmate commenced service of a four-to-fourteen year sentence at the Lorton Reformatory on November 16, 1965. Between December 20, 1965, and March 3, 1967, he was cited in numerous disciplinary reports for shirking work assignments and exhibiting disrespect for, and refusing to cooperate with, prison officials. As a result, he was placed in segregated confinement in a maximum security unit (Def's Ex. A). When the inmate's over-all behavior suggested the possible presence of a mental disorder, it was

recommended that he undergo psychiatric evaluation. In the related report of the Superintendent of the Lorton Reformatory dated January 23, 1967, it is stated that the inmate:

" * * * has made a poor institutional adjustment, constantly complaining and apparently unable to get along with the other inmates. He seems to think he is better than others and should be given preferential treatment. He is hostile, arrogant and aggressive toward anyone in authority and is on the way to becoming a very serious disciplinary problem. He has shown what might be delusions of reference, that is, he mentions that other inmates threaten him with knives, etc., but he never names these inmates. In view of his hostile and irrational behavior, it is recommended that he be referred for legal psychiatric evaluation as soon as possible." (Def's. Ex. D.)

On March 10, 1967, the inmate was transferred to the District of Columbia Jail where he was examined by Dr. Donald Goldberg, a staff psychiatrist. Dr. Goldberg concluded that, although the inmate was "not grossly psychotic," he suffered "from a paranoid personality" necessitating psychiatric treatment, and recommended that he "be transferred to a mental hospital where he can receive the psychiatric treatment that he needs" (Def's. Ex. E).

On March 23, 1967, the inmate was transferred to Saint Elizabeths Hospital. A United States Treasury check, a marriage certificate, a social security card, and other items of personal

property accompanied him and were held by the hospital authorities for safekeeping. On August 7, 1967, the inmate was returned to the District of Columbia Jail and from the Jail to the Lorton Reformatory. His personal property was also returned to the Lorton Reformatory to be held in safekeeping in accordance with prison regulations until his release from confinement. (Def's. Ex. H; affidavit of Superintendent at 2.)

Following his return to the Lorton Reformatory, the inmate was cited in three additional disciplinary reports for refusing to cooperate with prison officials and for refusing to perform work assignments. For these infractions of prison rules, he was placed in segregated confinement from which he was later released. (Def's. Ex. A.)

The court, after hearing the arguments of counsel, entered summary judgment for the Director and the Commissioners.¹ This appeal followed.

¹ At the same time, the court denied the inmate's motion to amend the complaint to include the District of Columbia as an additional defendant.

ARGUMENT

The court below properly entered summary judgment in favor of appellees.

In essence, the inmate's complaint alleged that he was arbitrarily transferred from the prison system to a mental institution in violation of his constitutional rights; that certain personal property was unconstitutionally taken from him; and that he was illegally placed in solitary confinement, where he was subjected to "cruel and unreasonable punishment" in violation of his constitutional rights. As will be demonstrated, in each of these respects, the court below properly entered summary judgment against him.

A. The asserted unconstitutional transfer to a mental institution.

Because the inmate's behavior over an extended period was suggestive of a possible mental disorder, it was recommended by prison officials that he undergo a psychiatric evaluation. The inmate was subsequently examined by a prison psychiatrist who determined that he was suffering from a mental disorder necessitating treatment. Upon the certification of the psychiatrist, the inmate was then transferred to Saint Elizabeths Hospital pursuant to § 24-302, D. C. Code, 1967, which provides:

"Any person while serving sentence of any court of the District of Columbia for crime, in a District of Columbia penal institution, and who, in the opinion of the Director of the Department of Corrections of the District of Columbia, is mentally ill, shall be referred by such Director to the psychiatrist functioning under section 24-106, and if such psychiatrist certifies that the person is mentally ill, this shall be sufficient to authorize the Director to transfer such person to a hospital for the mentally ill to receive care and treatment during the continuance of his mental illness."

The inmate claims that his transfer was violative of due process because he was not first accorded a judicial hearing. In this connection, he equates such transfer to a civil commitment to a mental institution (Brief at 12). But, unlike an ordinary civil commitment, the inmate's detention at Saint Elizabeths did not derive from a proceeding to hospitalize him. It stemmed from his conviction and sentence and, as such, could not extend beyond his term of imprisonment. It is well settled in this regard that the transfer of a prison inmate to a mental institution prior to expiration of his sentence is an administrative matter which rests within the sound discretion of the prison authorities. Considerations of due process do not demand that a judicial hearing take place as a condition precedent to such a transfer. See Darey v. Sandritter, 355 F. 2d 22 (9th Cir., 1965), and cases cited therein at 23; Douglas v. King, 110 F. 2d 911 (8th Cir., 1940); In re

Baptista's Petition, 206 F. Supp. 288 (W. D. Mo., 1962); Ex Parte Soborsky, 109 Vt. 476, 199 Atl. 757 (1938); cf. Carter v. United States, 108 U. S. App. D. C. 405, 408, 283 F. 2d 200 (1960); Frazier v. United States, 119 U. S. App. D. C. 246, 339 F. 2d 745 (1964).

In Darey v. Sandritter, supra, the Court flatly rejected a contention like that made here, stating (355 F. 2d at 23):

"It is not appellant's hospitalization which deprives him of his liberty. The deprivation stems from the judgment of conviction and the sentence of confinement. The hospitalization does not result from a separate order or judgment which is independent of the penal judgment and might extend a legally imposed term of restraint. Whether a prisoner, during his lawful term, should or should not receive medical treatment in suitable environs must ordinarily be determined by custodial authorities in the proper exercise of a sound discretion. * * *"

Similarly, in Jones v. Pescor, 169 F. 2d 853, 856 (8th Cir., 1948), the Court said:

"* * * As to the contention that appellant's transfer to and confinement in the U. S. Medical Center were illegal and violative of due process, because he was not given a hearing on his need for such care and treatment, we have previously held that the determination of a prisoner's mental condition and need for treatment, pursuant to 18 U. S. C. A. § 876 and without judicial trial, does 'no violence to his constitutional rights.' Douglas v. King, 8 Cir., 110 F. 2d 911, 913.

And again, we have said that Congress undeniably has the power to make such provision for the medical care and treatment of federal prisoners and to set up such administrative machinery for determining a prisoner's need for care and treatment and the nature thereof, without the right to a formal hearing, as it deems advisable. *Estabrook v. King*, 8 Cir., 119 F. 2d 607, 609, 610."

The cases relied on by appellant do not support his position.

In Specht v. Patterson, 386 U. S. 605 (1967) (Brief at 14, 15), defendant was convicted of an offense under a statute that carried a maximum sentence of 10 years. Instead of sentencing the defendant under this statute, the trial judge sentenced him " * * * under the Sex Offenders Act * * * for an indeterminate term of from one day to life without notice and full hearing * * *" (id. at 607). The Supreme Court held that, because " * * * the invocation of the Sex Offenders Act means the making of a new charge leading to criminal punishment * * *, " the indeterminate sentence could not stand (id. at 610). In the instant case, no such fact pattern exists.

And in Baxtrom v. Herold, 383 U. S. 107 (1966), an attempt was made to commit a prison inmate to a mental institution at the expiration of his sentence without the judicial review afforded to others civilly committed. It was held that the refusal to grant the inmate a judicial hearing as a condition precedent to this type of commitment

constituted a denial of equal protection of law. In contradistinction to Baxtrom, the instant case does not involve an attempt to commit or detain an inmate in a mental institution after the expiration of his prison sentence. It involves only the authority of prison officials to provide for the inmate's treatment while his sentence remains unserved.

The inmate also challenges his transfer to the mental institution on the ground that the antecedent psychiatric evaluation was inadequate. He asserts in this regard that the mental examination conducted was of an insufficient duration to justify the conclusion that hospitalization and treatment were necessary (Brief at 16). The record shows, however, that prison officials observed the inmate's behavior over an extended period of time. The inmate was then examined by a prison psychiatrist who reviewed his past history of abnormal behavior and conducted an independent examination. The psychiatrist's report states that the inmate:

" * * * suffers from a paranoid personality. Though he is not grossly psychotic at the present time the possibility of deterioration in his character structure is a very real one. Therefore, it is suggested that he be transferred to a mental hospital where he can receive the psychiatric treatment that he needs." (Def's. Ex. E.)

Certainly, such a background afforded rational justification for temporarily hospitalizing the inmate for treatment.²

B. The holding of the inmate's property.

The inmate additionally challenges the action of the prison authorities in taking and holding his personal property. In this connection, the record discloses that, when the inmate was transferred to Saint Elizabeths Hospital, a United States Treasury check, a marriage certificate, a social security card, and other items of personal property accompanied him. When the inmate was returned from the mental institution to the prison system, his personal property was returned to the prison authorities to be held for safekeeping in accordance with prison regulations until his release from confinement. (See affidavit of Superintendent and supporting Ex. H.) Security measures of this

² The inmate concedes in his amended complaint that, prior to its filing, he had been returned from the mental hospital to the prison system. This circumstance would appear to render the case moot respecting the alleged unlawful transfer issue. Cf. Doremus v. Board of Education, 342 U. S. 429, 433 (1952); Troy State University v. Dickey, 402 F. 2d 515 (5th Cir., 1968). However, prison records show that, on August 28, 1968, after the date of the order appealed from, the inmate was again transferred to Saint Elizabeths Hospital. On October 30, 1968, he was transferred to the federal hospital for prisoners in Springfield, Missouri.

nature fall within the wide range of discretion of prison officials and, as such, will not be interfered with by the courts. Carey v. Settle, 351 F. 2d 483 (8th Cir., 1965); Parks v. Ciccone, 281 F. Supp. 805, 813 (W. D. Mo., 1968).

C. Miscellaneous allegations of mis-treatment and harrassment.

The inmate also claims that his allegations respecting "harrassment and arbitrary and vindictive treatment" on the part of prison officials were sufficient to withstand the motion for summary judgment (Brief at 9). In this connection, the amended complaint does nothing more than allege in conclusory fashion that, following his return from Saint Elizabeths Hospital to the Lorton Reformatory on August 8, 1967, the inmate was "placed in solitary confinement * * * without justification" and "was subjected to cruel and unreasonable punishment in violation of his constitutional rights." Disciplinary reports attached to the motion for summary judgment disclose, however, that, following the inmate's return to the Jail, he was placed in segregated confinement due to his refusal to submit to a routine search and his refusal to perform work assignments. (See reports dated October 13, 1967, and October 31, 1967, contained in Def's. Ex. A.)

Against this background, it is submitted that the conclusory allegations made here are manifestly insufficient to withstand a motion

for summary judgment. See Richardson v. Rivers, 118 U. S. App. D. C. 333, 335 F. 2d 996 (1964); Peterson v. Rivers, 121 U. S. App. D. C. 327, 350 F. 2d 457 (1965); White v. Clemmer, 111 U. S. App. D. C. 145, 295 F. 2d 132 (1961), cert. den., 368 U. S. 992 (1962); Birnbaum v. Trussell, 347 F. 2d 86 (2nd Cir., 1965); Morgan v. Sylvester, 125 F. Supp. 380, 390 (S. D. N. Y., 1954), aff'd. 220 F. 2d 758 (2nd Cir., 1955); United States v. Bolsinger, 311 F. 2d 215 (3rd Cir., 1962). Cf. Negrich v. Hohn, 379 F. 2d 213 (3rd Cir., 1967); Cannon v. Willingham, 358 F. 2d 719 (10th Cir., 1966); Roberts v. Pegelow, 313 F. 2d 548 (4th Cir., 1963); Harris v. Settle, 322 F. 2d 908 (8th Cir., 1963); Wallach v. City of Pagedale, Missouri, 359 F. 2d 57 (8th Cir., 1966). This rule is especially applicable where, as here, the inmate's complaint has been drafted by counsel,³ and its conclusory allegations have been countered by the jailer with an affidavit containing supporting exhibits.⁴ And it is not without

³ Cf. Hudson v. Hardy, ____ U. S. App. D. C. ___, ____ F. 2d ____ (No. 20, 908, decided February 14, 1968, petition for rehearing en banc pending).

⁴ While the inmate also alleged that he was isolated from the general prison population, without cause, during February and March, 1967, it is clear from the affidavit of the Superintendent and supporting exhibit A that such administrative segregation was fully justified by disciplinary problems of the inmate's own creation and the added circumstance that he was then considered to have a possible mental disorder. Cf. Roberts v. Pegelow, supra, 313 F. 2d at 550.

significance that the reply affidavit of the inmate is as devoid of specificity as his original complaint. Compare Wright v. McMann, 387 F. 2d 519 (2nd Cir., 1967), wherein the allegation of cruel and unusual punishment, unlike that in the instant case, was buttressed with specific facts setting forth in a clear and detailed manner the precise mistreatment to which the inmate was allegedly subjected (id. at 521). In short, the inmate's allegation of "cruel and unreasonable punishment" falls far short of meeting the test of specificity constantly insisted upon by the applicable decisional law in this circuit and elsewhere.

The inmate's claim for damages is equally devoid of merit. In addition to the reasons heretofore discussed the complaint alleges no wrongdoing whatever on the part of the Commissioners, since it fails to recite facts connecting the Commissioners with the actions complained of. As such, it is fatally deficient. See King David and Virginia C. David v. Sheldon Cohen, et al., ____ U. S. App. D. C. ___, ____ F. 2d ____ (No. 21,649, decided January 19, 1969, slip opinion at 3).

The inmate's claim for damages against the Director is based on the theory that he "has supervisory authority over Lorton Reformatory * * * and control of Reformatory officials" (amended complaint at 1, paragraph 2). It is axiomatic, however, that public officers

are immune from civil suits for damages predicated on their performance of nonministerial acts within the scope of their authority and in discharge of their official duties. See, for example, David v. Cohen, supra, slip opinion at 3 and 4). This rationale is equally applicable here.

CONCLUSION

Upon the foregoing, it is respectfully submitted that the judgment of the court below is in all respects correct and should, therefore, be affirmed.

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